IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 622 of 2006
In
COMPANY PETITION No. 137 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ Sd/-

==========

1.	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2.	To be referred to the Reporter or not ?	**YES**
3.	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4.	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5.	Whether it is to be circulated to the civil judge ?	**NO**

==========

M/S. HAWA CONTROLS - Applicant
Versus
O.L. OF TIRUPATI FOUNDRY PVT. LTD. & 3 - Respondents

==========

Appearance :
MR ANIP A GANDHI for Applicant.
MR MRUGESH JANI for Respondent No. 1.
MR MITUL K SHELAT for Respondent No. 2.
NOTICE SERVED BY DS for Respondent No. 3.
MR KAUSHIK B. PUJARA WITH MR MAYUR RAJGURU for Respondent No. 4.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 12/12/2007
ORAL JUDGMENT

1. The applicant, namely, M/s. Hawa Controls has taken out this Judge's Summons seeking declaration from this Court that the applicant is the bonafide purchaser for valuable consideration of the property bearing Nos. 703, 704, 709 and 710, Marble Arch, Race Course Circle, Vadodara – 390 007 and that the said transaction does not amount to fraudulent transaction or fraudulent preference as envisaged under the provisions of Sections 531 and 531A of the Companies Act, 1956 as alleged or otherwise. The applicant has also prayed for the declaration that the said transaction is the bonafide transaction and is not void under Section 536 (2) of the Act. The applicant has further prayed for the direction to the Official Liquidator not to take possession forcibly or otherwise of the premises in question as it does not belong to the Company in liquidation.

2. An affidavit is filed by one Mr. Asad Fazlurrehman Kagdi in support of the Judge's Summons. This Court has

issued notice on 28.11.2006. Notice was waived by learned advocate appearing for the Official Liquidator and Mr. Mitul Shelat, learned advocate appearing for GSFC. Direct service was permitted so far as Bank of Baroda is concerned.

3. On 07.05.2007, this Court has passed an order granting leave to the applicant to join one Mr. Mukeshbhai Kantilal Thakker, Ex-Director of the Company in liquidation as party – respondent for the purpose of ascertaining as to whether before selling the properties in question to the applicant, the Company had passed any resolution. Pursuant to the notice issued by this Court on newly added party, Mr. Kaushik B. Pujara, learned advocate appeared on behalf of respondent No.4 and affidavit is filed by respondent No. 4.

4. Mr. Anip Gandhi, learned advocate appearing for the applicant has submitted that the applicant firm is a bonafide purchaser for value without notice of the properties bearing Nos. 703, 704, 709 and 710, Marble Arch, Race Course Circle, Vadodara – 390 007 from the Company now in liquidation, namely, Tirupati Foundry

Private Limited, now represented by the Official Liquidator, by three Regd. Sale Deeds which were executed pursuant to an Agreement of sale. He has further submitted that the representative of the Official Liquidator has visited the premises on 02.05.2002. Thereafter, the Official Liquidator has addressed a letter dated 08.08.2002 to the applicant requesting inter alia to produce the documents supporting the applicant's claim that they are the owners of the above referred premises and that they have purchased the same bonafide from the Company in liquidation, prior to the order of winding up. In reply to the said letter, the applicant by its letter dated 03.10.2002, submitted copies of the above referred Sale Deeds to the Official Liquidator along with all other supporting documents. The Official Liquidator has filed OLR No. 23 of 2003 before this Court, in which the present applicant was shown as respondent No. 3. In the said report, the Official Liquidator has, *inter alia*, prayed for certain directions to be issued to the present applicant to handover peaceful possession of the premises in question. The applicant has filed detailed affidavit on 19.04.2003 in the said OLR and resisted the contentions raised by the Official Liquidator. In view of

pendency of the said OLR, the applicants have not preferred the Judge's Summons earlier. As per the oral directions given by the Court, the present application was filed and hence, there was some delay in filing the present application.

5. Mr. Gandhi has further submitted that the Company in liquidation has entered into Regd. Agreement for sale with the applicant on 02.06.2000 and thereafter Sale Deeds were executed on 19.10.2000. The entire sale consideration was paid by cheques by the applicant which has been duly received by the Company in liquidation. At all material times, the applicant was not aware about the pendency of the winding up petition or any other legal proceedings or claim in respect of the above referred properties and, therefore, so far as the applicant is concerned, it has entered into the sale transaction without any actual or constructive knowledge of the pending proceedings for winding up of the Company. He has, therefore, submitted that the present applicant is a bonafide purchaser for valuable consideration without notice and that the sale transactions entered into with the applicant for above

referred properties are legal, valid, proper and are not void.

6. Mr. Gandhi has further submitted that though the winding up petition was filed in 1996, the winding up order came to be passed by this Court on 13.02.2002. During the pendency of the said petition, no notice of the same was ever sent to the applicant at its address. When the applicant got this property transferred in its name in the record of the Co-operative society as well as Municipal records, none of the said authorities had informed regarding pendency of the winding up petition. He has, therefore, submitted that the transactions of entering into agreement of sale and the Sale Deeds, have been duly recorded with the authorities as per the Indian Registration Act and are, therefore, legal and the same did not amount to fraudulent transfer or fraudulent preference within the meanings of Sections 531 & 531-A of the Companies Act, 1956.

7. Mr. Mrugesh Jani, learned advocate appearing for the Official Liquidator has reiterated the facts stated and averments made in OLR No. 23 of 2003. He has further

submitted that he is not in a position to controvert the documents produced by the applicant before the Court and there is nothing to suggest that the applicant was aware about the winding up proceedings or that adequate consideration was not paid to the Company in liquidation.

8. Mr. Kaushik Pujara, learned advocate appearing for the newly joined party – the Ex-Director of the Company in liquidation has relied on the affidavit-in-reply filed on 12.06.2007. It is specifically stated in the said affidavit that before selling the property in question, the annual general meeting of the members of the Company had passed a Resolution dated 30.09.1998 resolving to sell the said premises and authorizing respondent No. 4 to find out buyers and to negotiate and fix sale price and to execute Banakhat, sale Deed and any other necessary documents on behalf of the Company. A copy of the said Resolution is attached along with the affidavit. Thereafter, Resolution was passed at the meeting of the Board of Directors of the Company in liquidation on 31.07.1999 resolving that the office premises be sold to the present applicant for the sale consideration of Rs.11

Lacs and authorizing respondent No. 4 to execute the Banakhat, to receive sale consideration and to execute Sale Deed in favour of the applicant. A copy of the said Resolution is also placed on record. Mr. Pujara has further submitted that thereafter Banakhat dated 02.06.2000 was executed by respondent No. 4 for and on behalf of the Company in liquidation and sale deeds were also executed by him on 19.10.2000. He has, therefore, submitted that the transactions in question are legal, valid and genuine.

9. After having heard learned advocates appearing for the respective parties and after having gone through the affidavit filed in support of Judge's Summons, documents attached with the Judge's Summons and the affidavit filed by the respondent No.4, the Court is of the view that it is true that during the pendency of the winding up petition, the transactions in question were taken place. However, it has not come on record that the applicant was aware about the fact that winding up proceedings are pending before the Court. It is true that Ex-Directors might be aware about winding up proceedings but nobody has ever contemplated that the winding up order

might be passed in the pending winding up petition. It is an admitted position that the winding up order was passed much after the completion of the transactions of sale and while invoking the provisions contained in Sections 531 & 531-A of the Companies Act 1956, one has to see that whether the transactions in question are fraudulent or not or whether any preferential treatment has been given. Looking to the records available, it is difficult to come to the conclusion that the properties were transferred in a fraudulent manner or with inadequate consideration. The sale deeds are registered sale deeds. After sale of the properties, they were registered with the authorities, names were transferred in the Municipal record and the Society's record and all these transactions appear to be legal and valid. There is no allegation from any corner that the properties were undervalued as sale deeds have been duly registered. Even before selling the properties in question, necessary resolutions have been passed and those resolutions have come on record.

10. Before this Court, reliance was placed on the decision of the Bombay High Court in the case of **MONARK**

ENTERPRISES V/S. KISHAN TULPULE AND OTHERS, 74 COMPANY CASES 89 wherein it is held that Section 531-A of the Companies Act, 1956 provides for "avoidance of voluntary transfers" made by a Company within a period of one year during the presentation of a petition for winding up (i) if such transfer was not made in the ordinary course of its business, or (ii) if such transfer was not made in good faith for valuable consideration. If the Court comes to the conclusion that such transfer, though made within a period of one year before presentation of the petition, was made either in the ordinary course of business or in good faith and for valuable consideration, such transfer would not be annulled. The burden of proving that the impugned transaction was not entered into in the ordinary course of business or in good faith and for valuable consideration would be on the Official Liquidator or the Creditors impugning the transaction.

11. So far as the present case is concerned, neither the Official Liquidator nor any of the Creditors have come forward and pointed out that the transaction in question was not entered into in the ordinary course of business

or in a good faith and for valuable consideration. On the contrary, the applicant has proved beyond reasonable doubt by producing necessary evidence and established that the transaction in question was valid and genuine. The Bombay High Court has further observed in the aforesaid judgment that unless a transaction of transfer of a company's property amounts to a fraudulent preference under the bankruptcy law or insolvency law and it is entered into within a period of six months prior to the commencement of winding up of the company, the transaction in question cannot be treated as void under Section 531 (1) of the Companies Act, 1956. The law does not presume the transaction to be a fraudulent preference merely because it was entered into within a period of six months prior to the commencement of winding up. If the transaction was entered into as a result of lawful pressure of a bona fide creditor to recover his dues, the transaction of transfer could not be treated as a fraudulent preference. This question does not arise in the present case as it is not the case of the applicant that the applicant has entered into the transaction in question as a result of any pressure to recover its dues.

12. Taking overall view of the matter and considering the relevant statutory provisions as well as decided case law on the subject, the Court is fully convinced with the submissions made on behalf of the applicant and hence, the declaration sought for in the present Judge's Summons is granted. The transaction in question cannot be hit by the provisions contained in Sections 531 & 531-A of the Companies Act, 1956. The Official Liquidator is, therefore, directed not to take possession of the properties in question.

13. This application is allowed accordingly without any order as to costs.

Sd/-

[K. A. PUJ, J.]

Savariya